REMARKS

Applicant notes with appreciation the interview courteously afforded the undersigned representative of the Applicant on October 23, 2007. At the interview, the rejections that were made in the August 7, 2007 Office Action were discussed, as summarized below.

In the Office Action dated August 7, 2007, claims 2-5 were rejected under 35 U.S.C. §112, first paragraph as failing to comply with the written description requirement because the Examiner stated that the installation and operation of original software, and subsequent operation therewith according to the generated operation model during non-normal usage time, is not disclosed in the original specification. Applicant submits that operation of the software at non-normal usage times according to a model is disclosed in the original specification in the paragraph bridging pages 5 and 6. That paragraph refers to testing of the original software using a phantom, and the sole purpose of the phantom is to allow testing to proceed outside of the times at which an actual patient is present, i.e., non-normal usage times.

Additionally, claims 1-5 were rejected under 35 U.S.C. §103(a) as being unpatentable over Scholtens et al. in view of Weinberg et al. Although the Scholtens et al. reference was mentioned in the previous Office Action, it was not specifically relied upon as a basis for rejecting any claim. The Weinberg et al. reference was not cited at all in the previous Office Action. Therefore, Applicant has not had any reason to extensively comment previously on the teachings of either of these references.

The Examiner has stated that the Scholtens et al. reference discloses all of the limitations of claim 1, except generating a computerized operation model. The Examiner relies on the Weinberg et al. reference as providing such a teaching.

Applicant does not agree that the Scholtens et al. reference discloses an apparatus or a method for upgrading software that can be implemented without affecting the normal operation or service of the system. In paragraphs [0023] and [0024] of the Scholtens et al. reference, it is explicitly stated that "new software can be installed, tested and either committed to permanent use or backed-out all without loss of stable calls and without significant impairment of service," and that "the system preserves already-established calls/connections and handles ongoing demands for service throughout its upgrade. "

This clearly means that the testing of the new software according to Scholtens et al. takes place during normal usage time. If this were not the case, the aforementioned statements would be unnecessary. The "maintenance window" that is mentioned in paragraph [0032] of Scholtens et al., which is cited by the Examiner in support of Scholtens et al. providing a teaching for operation during a non-normal usage time, describes only the time frame of a particular upgrading procedure, and says nothing as to whether that time frame occurs during normal operation, According to the aforementioned statements in paragraphs [0023} and [0024], it is clear that this "maintenance window" does, in fact, occur during normal usage times.

Therefore, even if the Scholtens et al. system were modified in accordance with the teachings of Weinberg et al., this would mean that the model disclosed in Weinberg et al. was simply used during normal operational times of the system being tested in Scholtens et al. Moreover, in view of the fact that the testing in Scholtens et al. does actually take place during normal operation time, it is questionable whether the use of a model during such normal operation time could even be inserted in the Scholtens et al. system, without disruption of service. It is also questionable whether there would even be any purpose to be served by using a model of the type described in Weinberg et al. for the purpose of testing in the procedure disclosed in Scholtens et al., since "real time:" data would always be available for testing purposes in the Scholtens et al. procedure, in view of the fact that it takes place during normal operational times.

As also discussed at the interview, the claims have been amended to limit the subject matter thereof to testing of software that operates a technical system in a medical facility that interacts with patients for treatment or examination. As set forth in the amended claims, the data for generating a computerized model are obtained during the normal usage time of the medical facility, namely when the technical system installed at the medical facility is interacting with patients for treatment or examination. The testing then takes place using this operational model at a non-normal usage time, which is now defined as a time of non-interaction with patients of the medical facility.

As noted above, in the Scholtens et al. reference, the testing still takes place during normal operational time of the telephone system described therein, and in fact it is a goal of the Scholtens et al. system to allow such testing to be undertaken without disrupting the normal traffic experienced by the system. Therefore, even if the Scholtens et al. reference were modified to use the model disclosed in the Weinberg et al. reference, this would merely mean that the model was used in the

Scholtens et al. system during normal operational time, in contrast to the subject matter disclosed and claimed in the present application.

Moreover, Applicants submits that the insight to test a technical system that is used in a medical facility, that interacts with patients, by acquiring data from the patients during a normal usage time to generate a model, and then testing the system based on the model at a time when patients are not normally present at the facility, is not readily apparent to those of ordinary skill in the field of designing medical facility software, based on considerations of the type disclosed in the Scholtens et al. and Weinberg et al. references. Although, as argued above, it is Applicant's contention that the Scholtens et al. reference does not even disclose conducting the testing outside of normal usage time, Applicant submits that even if the general concept of testing computerized equipment during downtime of the were disclosed in the Scholtens et al. reference, this would normally be considered by a person of ordinary skill in the art as referring to a time when incoming or outgoing *data* are not present. The insight to test a medical facility by gathering data during times when patients interact with the facility, and then testing the facility at times when patients are normally absent, is not readily apparent by considerations that normally concern occupation of a system with data, as opposed to living subjects. There is no reason why a person of ordinary skill in the field of designing software testing for medical facilities would somehow equate "data" with "patients."

Claim 1, therefore, would not have been obvious to a person of ordinary skill in the field of designing software for a technical system used in a medical facility to examine or treat patients, under the provisions of 35 U.S.C. §103(a) based on the teachings of Scholtens et al. and Weinberg et al. Claims 2-5 add further steps to the non-obvious method of claim 1, and therefore would not have been obvious to a person of ordinary skill for the same reasons discussed above in connection with claim 1.

Claims 6-8 were rejected under 35 U.S.C. §103(a) as being unpatentable over Scholtens et al. in view of Weinberg et al., further in view of Tse. Applicant submits the above discussion regarding the Scholtens et al./Weinberg et al. combination is equally applicable to the rejection of claims 6-8, each of which embodies the subject matter of independent claim 1 therein. Even if the Examiner's statements concerning the Tse reference are correct, modifying the Scholtens et al./ Weinberg et al. combination in accordance with those further teachings still would not result in the subject matter of any claims 6-8.

At the interview, the possibility of amending the present application in the manner set forth above was discussed, and the Examiner stated that such amendments would raise a new issue requiring further searching or consideration, and thus would not be entered after the Final Rejection. The present RCE has therefore been filed to permit entry and consideration of these claim amendments.

Early reconsideration of the application is respectfully requested.

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